

## REMARKS

Claims 3 – 6, 9-11 and 17 - 22 are pending. Claims 1, 2, 7, 8, 12-16 were withdrawn from consideration and have now been cancelled, without prejudice.

The specification has been amended to update the priority information, as the parent application is now issued. In addition, the figure legends have been brought into conformity with the figures.

Further, the term “MACVECTOR” has been designated as a trademark throughout the specification and in claims 18-20.

No new matter is added by this amendment.

**I. Claims 18-20 are objected to for containing the trademark MacVector without designating the term as such.**

The claims have been corrected. Withdrawal of this objection is requested.

**II. Claims 18-20 have been rejected under 35 USC 112, second paragraph, as being indefinite. The examiner asserts that “MacVector 6.0” is indefinite because the computer program contains an algorithm with variables and the specification does not provide what numbers were used as the variable to calculate the percent identity.**

Applicants respectfully traverse this rejection.

The specification describes using various programs for performing an alignment and determining identity at default settings. See, e.g., page 7, lines 9-12. Having provided one of skill in the art with the method by which identity can be determined, it is not necessary for the specification to teach the person of skill in the art how to develop its own computer program.

Reconsideration and withdrawal of this rejection is requested.

Appln No. 10/696,900  
Office Action dated January 9, 2006  
Response June 5, 2006

### **III. Rejections Under 35 USC 102.**

Claims 3-6 and 11 are rejected under 35 USC 102(b) as being anticipated by Srivastava, US 5,252,479, which is relied upon for teaching a recombinant AAV having a nucleotide sequence 83.2% identical to nucleotides 1-143 of SEQ ID NO:1 in the application and cells containing same.

Claims 3-6, 9 and 11 are rejected under 35 USC 102(a) as being anticipated by Rutledge (J Virol, 72(10):309-319 (1998)), which is relied upon for teaching sequences 98.6% identical to nucleotides 1-143 of SEQ ID NO:1.

Claims 3-6 and 10-11 are rejected under 35 USC 102(e) as being anticipated by Latta et al, US 6,033,885.

Claims 3-6 and 11 are rejected under 35 USC 102(e) as being anticipated by Natsoulis et al, US 6,207,457.

The examiner indicates that the terms (b) and (c) in claims 3 and 5 read on nucleotide sequences that are broader than a nucleotide sequence consisting of nucleotides 1-143 or nt 4576 to 4718 of SEQ ID NO:1. The claims have been amended to remove parts (b) and (c) from claims 3 and 5. Claim 9 has been amended to remove reference to functional fragments of the capsid proteins. In addition, the claim has been amended to clarify that the nucleic acid sequence is heterologous to the AAV ITRs.

In view of the claim amendments, the outstanding objections are rendered moot.

### **IV. Claims 17 – 22 are free of these citations, but have been rejected under nonstatutory obviousness-type double patenting over claims 1-9 of US Patent No. 6,759,237.**


Applicants acknowledge this rejection and request that they be permitted to defer addressing the objection until such time as the claims are otherwise considered to be in condition for allowance.

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The Director is hereby authorized to charge any deficiency in any fees due with the filing of this paper or credit any overpayment in any fees to our Deposit Account Number 08-3040.

Respectfully submitted,

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